

No. SC 085403

IN THE MISSOURI SUPREME COURT

**STATE EX REL. L. DAVID ORMEROD, M.D.
Plaintiff/Relator,**

vs.

**THE HONORABLE GENE HAMILTON, PRESIDING JUDGE,
CIRCUIT COURT OF BOONE COUNTY,
Respondent**

**Petition For Writ of Prohibition or
In The Alternative For Writ of Mandamus**

RELATOR'S REPLY BRIEF

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TABLE OF AUTHORITIES

Cases

State ex rel. Automobile Club Inter-Insurance Exchange v. Gaertner, 636

S.W.2d 68, 74 (Mo. banc 1982) 5, 7

State ex rel. Milham v. Rickhoff, 633 S.W.2d 733 (Mo. banc 1982) 6

State ex rel. Missouri Department of Natural Resources v. Roper, 824

S.W.2d 901 (Mo. banc 1992) 6

State of Missouri v. Curators State University, 57 Mo. 178, 1874 WL 8512

1874) 4, 5, 7

Statutes

§ 172.020, RSMo. *passim*

§ 508.040, RSMo. *passim*

POINT RELIED ON

RELATOR IS ENTITLED TO AN ORDER COMMANDING THE RESPONDENT CIRCUIT JUDGE TO ENTER AN ORDER TRANSFERRING THE CASE TO THE CIRCUIT COURT OF JACKSON COUNTY BECAUSE RELATOR’S CHOSEN VENUE OF JACKSON COUNTY FOR THE ACTION AGAINST THE BOARD OF CURATORS IS PROPER UNDER THE CORPORATION VENUE STATUTE IN THAT THE BOARD OF CURATORS IS A CORPORATION WITHIN THE MEANING OF CORPORATION VENUE STATUTE § 508.040 AND HAS AN OFFICE OR AGENT FOR THE TRANSACTION OF ITS BUSINESS IN JACKSON COUNTY.

State ex rel. Automobile Club Inter-Insurance Exchange v. Gaertner, 636 S.W.2d 68 (Mo. banc 1982)

State ex rel. Milham v. Rickhoff, 633 S.W.2d 733 (Mo. banc 1982)

State of Missouri v. Curators State University, 57 Mo. 178, 1874 WL 8512 1874)

State ex rel. Missouri Department of Natural Resources v. Roper, 824 S.W.2d 901 (Mo. banc 1992)

§ 508.040, RSMo.

REPLY ARGUMENT

RELATOR IS ENTITLED TO AN ORDER COMMANDING THE RESPONDENT CIRCUIT JUDGE TO ENTER AN ORDER TRANSFERRING THE CASE TO THE CIRCUIT COURT OF JACKSON COUNTY BECAUSE RELATOR'S CHOSEN VENUE OF JACKSON COUNTY FOR THE ACTION AGAINST THE BOARD OF CURATORS IS PROPER UNDER THE CORPORATION VENUE STATUTE IN THAT THE BOARD OF CURATORS IS A CORPORATION WITHIN THE MEANING OF CORPORATION VENUE STATUTE § 508.040 AND HAS AN OFFICE OR AGENT FOR THE TRANSACTION OF ITS BUSINESS IN JACKSON COUNTY.

Relator desires to submit this brief written reply.

Respondent argues that the Curators is a public corporation and as such the Curators is not within the scope of the corporation venue statute § 508.040, RSMo. A long time ago, this Court rejected the substance of the respondent's argument.

Long ago, this Court recognized that where a law does not distinguish between a public and private corporation, a court lacks power to make any discrimination. In *State of Missouri v. Curators State University*, 57 Mo.

178, 1874 WL 8512 1874) the Court held the Curators was a “corporation” within the meaning of a law which pertained to “. . . any company, association, or corporation. . . .” 1874 WL 8512 *3. This Court held that when a statute or other law makes no discrimination between public or private corporations or more particularly the business of the company, association, or corporation, no ground exists for such discrimination by a court. *Id.* at *3-*4. A court has no right to interpolate “private” into the law or graft an exclusion for a “public” corporation where the law is silent. *Id.* As a “public corporation”, the Curators enjoys no shelter from the application of a law pertaining to any company, association, or “corporation”. The venue law § 508.040 applies to “corporations”. So taken, and the Curators have not shown otherwise – corporation venue statute § 508.040 law applies to the Curators in this case. *Id.*

The Curators admit that the organic language of Chapter 172 constitutes the body a “jural person” entity which can sue and be sued. Respondent’s Brief at p. 18. Under that law, the Curators can complain and defend in all courts. § 172.020, RSMo. This Court has previously held that the corporation venue law § 508.040, RSMo applies to such entity defendants. *State ex rel. Automobile Club Inter-Insurance Exchange v.*

Gaertner, 636 S.W.2d 68, 74 (Mo. banc 1982). The result should not be any different as concerns the Curators.

In summary, the Relator requests relief for the following reasons:

1. The sole defendant Curators is a corporation within the meaning of Section 508.040 of the Missouri Revised Statutes which provides as follows:

“Suits against corporations shall be commenced either in the county where the cause of action accrued, . . . or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business.”

2. It is unrefuted that, at all times relevant, the defendant Curators had or kept in Jackson County a campus, including a law school, and employees or instructors or professors, that is an office or agent for the transaction of its usual and customary business as a university, all within the meaning of § 508.040, RSMo.

3. The residence of the Curators is not relevant herein and it otherwise waived any challenge to venue in this case.

4. The law of Missouri does not require suit against the Curators to have venue in Boone County. ***State ex rel. Milham v. Rickhoff***, 633 S.W.2d 733, 734 (Mo. banc 1982). Furthermore, no court-made “special

venue” rule requiring venue in Boone County applies in this case. *State ex rel. Missouri Department of Natural Resources v. Roper*, 824 S.W.2d 901, 903-04 (Mo. banc 1992)(rejecting “special venue” rule applicable to state agencies under *State ex rel. Highway Commission v. Bates*, 296 S.W. 418 (Mo. banc 1927)).

5. The Curators is a corporation within the meaning the corporation venue law § 508.040. *State of Missouri v. Curators State University*, 57 Mo. 178, 1874 WL 8512 1874); *State ex rel. Automobile Club Inter-Insurance Exchange v. Gaertner*, 636 S.W.2d 68, 74 (Mo. banc 1982).

6. Venue for Relator’s case against the Curators is proper in Jackson County, the venue of Relator’s choice. The Curators have the burden on the challenge to venue and have failed that burden to show otherwise. Finally, the Respondent’s order which transfers the case to Boone County is improper for the additional reason that the order in effect grants a change of venue on the grounds of intra-state forum non-conveniens, a doctrine specifically rejected by this Court.

RELIEF SOUGHT

Relator seeks the Order of this Court prohibiting the Circuit Court of Boone County from further accepting the case on transfer from the Circuit

Court of Jackson County or in the alternative that the Court order the transferee court precluded and estopped from assuming jurisdiction over the case; that the transferee court not allow the case to proceed on the docket of the Circuit Court of Boone County; and that the Court command the Respondent to enter an order transferring the case to the Circuit Court of Jackson County.

Relator seeks any other relief by way of extraordinary remedy, either in prohibition or mandamus, just and proper in the premises herein, and that he have and recover his costs and expenses incurred in the premises herein.

CONCLUSION

For the foregoing reasons, the Court should enter its ORDER commanding the Respondent to enter an order TRANSFERRING the case to the Circuit Court of Jackson County, and for its FURTHER ORDER granting relator's costs, and for other relief just and proper herein.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 84.06(c), certification is hereby made that:

1. This brief includes the information required by Rule 55.03; and
2. This brief complies with the limitations of Rule 84.06(b); and
3. This brief contains 1,510 words, according to the word count of
the word-processing software used to prepare the brief.

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2002, in 14 point font size and Times New Roman style.

Attorney for Relator

CERTIFICATE OF SERVICE

Certification hereby made that the original and sufficient number of true copies of the foregoing was served via [] commercial, overnight delivery, or [] via U.S. Postal Service, on December _____ 2003, to the Clerk of the Court, and on the same date and in the same manner, two true copies of same, and floppy disk, to each opposing counsel, as follows:

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